



Office of Commissioner  
Melissa Holyoak

UNITED STATES OF AMERICA  
**Federal Trade Commission**  
WASHINGTON, D.C. 20580

**Concurring Statement of Commissioner Melissa Holyoak**

*NGL Labs, LLC*, FTC Matter No. 2223144

July 9, 2024

According to the complaint the Commission issues today, NGL Labs, LLC, and two of its founders, Raj Vir and Joao Figueiredo, engaged in truly despicable conduct – taunting tweens<sup>1</sup> and teens with purportedly real messages from their friends or social media contacts (“are you straight?”, “I stalk u on ig [Instagram] all the time”, “I know what you did”) to lure them into buying NGL’s subscription product. The complaint alleges that the NGL app was rife with cyberbullying despite NGL’s claim to filter out such content. The Commission’s complaint alleges that preying on children and other consumers in these (and other) ways violated Section 5 of the FTC Act, the Children’s Online Privacy Protection Act (“COPPA”), and the Restore Online Shoppers’ Confidence Act (“ROSCA”).<sup>2</sup>

I strongly support this settlement,<sup>3</sup> which shows the Commission at its best – protecting the most vulnerable among us. Indeed, protecting children online is at the core of what the Commission should be doing, per its statutory mandate. Section 5 of the FTC Act charges the Commission with protecting consumers from unfair or deceptive practices.<sup>4</sup> Section 5(n) provides that a practice is unfair if it causes, or is likely to cause, substantial injury that is not outweighed by countervailing benefits to consumers or competition.<sup>5</sup> Deception is most likely and the risk of substantial injury at its greatest where kids are involved.<sup>6</sup> With their delightful

---

<sup>1</sup> Although the app was marketed to users 12 and up, the complaint alleges that Defendants had actual knowledge that children under the age of 12 were using the app, as Defendants received multiple complaints from parents and school administrators.

<sup>2</sup> As described in the complaint, the pre-July 2022 iteration of the app violated ROSCA in a particularly pronounced manner. *See* Compl. ¶ 36.

<sup>3</sup> I support Count II, which alleges that Defendants engaged in unfair marketing of an anonymous messaging app to children and teens, based on the specific facts alleged in the complaint. This count does not mean that the marketing of *all* anonymous messaging apps to *all* teens is necessarily unfair. One could imagine, for example, a mental health app for teens through which the teen could anonymously ask questions about where to seek treatment, whose distribution would not be unfair. *Cf.* SafeUT app, <https://safeut.org/> (last visited June 28, 2024) (offering confidential live chat with a crisis counselor and a confidential tip program). And not all teens are similarly vulnerable to deception and unfairness: a 13-year old and a 19-year old have different cognitive capacities to evaluate products or services offered to them.

<sup>4</sup> 15 U.S.C. § 45(a)(1).

<sup>5</sup> *Id.* § 45(n).

<sup>6</sup> *Cf.* An Examination of Children’s Privacy: New Technologies and the Children’s Online Privacy Protection Act, S. Hrg. 111-968 (Apr. 29, 2010), <https://www.govinfo.gov/content/pkg/CHRG-111shrg66284/html/CHRG-111shrg66284.htm> (noting that “Congress enacted COPPA in 1998 to address the unique privacy and safety risks created when young children—those under 13 years of age—access the Internet”).

tendency towards magical thinking and their (sometimes less delightful) appetite for risk,<sup>7</sup> children, tweens, and young teenagers are easy prey for unscrupulous actors like NGL, Vir, and Figueiredo.<sup>8</sup>

I am grateful to the hardworking staff who have brought this important case. During my tenure at the Commission, I will encourage the Commission to devote its resources to its core mission – stopping fraud and protecting the most vulnerable among us.<sup>9</sup>

---

<sup>7</sup> See, e.g., Eric D. Reicin, *Teens Online: Responsible Data Considerations for Business Leaders*, BBB National Programs (Aug. 25, 2022), <https://bbbprograms.org/media-center/bd/insights/2022/08/25/teens-online> (“Experts agree that teens are more risk-seeking than younger children but less competent than adults at managing online risks.”); Manuel Gamez-Guadix, Erika Borrajo, & Carmen Almendros, *Risky Online Behaviors Among Adolescents: Longitudinal Relations Among Problematic Internet Use Cyberbullying Perpetration, and Meeting Strangers Online*, *J. Behav. Addict* 5(1):100-107 (Mar. 2016), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5322986/>.

<sup>8</sup> While I am uncomfortable with individual liability for executives based solely on their oversight of a legitimate business, I fully support individual liability for those who actively participate in unlawful conduct. This complaint amply supports individual liability for Messrs. Vir and Figueiredo, who allegedly knew that their fake messages were deceiving and harassing consumers and actively participated in perpetuating those harmful practices. See, e.g., Compl. ¶¶ 24, 30-32, 45, 51-56.

<sup>9</sup> As I have previously noted, engaging in unauthorized rulemakings in either the consumer protection or competition context wastes precious resources that should be devoted to the Commission’s core mission. See, e.g., Statement of Comm’r Holyoak, Joined by Comm’r Ferguson, Regarding the Health Breach Notification Rule, FTC Matter No. P205405, at 2 (Apr. 26, 2024), <https://www.ftc.gov/legal-library/browse/cases-proceedings/public-statements/statement-commissioner-holyoak-joined-commissioner-ferguson-regarding-health-breach-notification>; Remarks of Commissioner Melissa Holyoak at the Competitive Enterprise Institute’s Annual Summit, Rediscovering Adam Smith: An Inquiry in the Rule of Law, Competition, and the Future of the Federal Trade Comm’n, at 9-10 (May 31, 2024), [https://www.ftc.gov/system/files/ftc\\_gov/pdf/holyoak-cei.pdf](https://www.ftc.gov/system/files/ftc_gov/pdf/holyoak-cei.pdf).